



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

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| Policy No. DOC 1.1.17                    | Subject: <b>PRISON RAPE ELIMINATION ACT OF 2003 (PREA)</b> |
| Chapter 1: ADMINISTRATION AND MANAGEMENT | Page 1 of 7 and Attachments                                |
| Section 1: General Administration        | Effective Date: Sept. 12, 2007                             |
| Signature: /s/ Mike Batista, Director    | Revised: 11/14/2014  |

## **I. POLICY**

The Department of Corrections has zero tolerance relating to all forms of sexual abuse and sexual harassment in accordance with the standards set forth in the [\*Prison Rape Elimination Act of 2003\*](#) (PREA).

## **II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

## **III. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Department Employee – A person employed by the Department of Corrections. This term does not include service providers.

Incarcerated Offender – Any individual detained in a Department-owned, operated, or contracted facility that is sentenced or committed to Department of Corrections supervision.

PREA Coordinator – The Department position responsible for administration and management of the Department-wide PREA program including but not limited to, compliance, policy and procedure development, staff training, offender education, and records and statistical tracking.

Service Providers - This term includes contracted persons, volunteers, interns, temporary employees, or other vendors providing service whose assignment is primarily on Department premises, e.g. facility or program office.

Sexual abuse of an offender by another offender – Sexual acts, sexual contact or any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation, in which the victim does not consent, is coerced by overt or implied threats of violence, or is unable to consent or refuse.

Sexual abuse of an offender by a staff member or service provider – Sexual acts, sexual contact or any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks; any attempt, threat, or request by a staff member or service provider to engage in these activities; any display by a staff member or service provider of his or her uncovered genitalia, buttocks, or breast in the presence of an offender; or voyeurism by a staff member or service provider, when these acts are unrelated to official duties or where the staff

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member or service provider has the intent to abuse, arouse, or gratify sexual desire.

Sexual Harassment - Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another or repeated verbal comments or gestures of a sexual nature to an offender by a staff member or service provider.

Voyeurism - An invasion of privacy of an offender by a staff member or service provider for reasons unrelated to official duties.

#### **IV. DEPARTMENT DIRECTIVES**

##### **A. General Requirements**

1. Administrators, or designees, will immediately respond to allegations of sexual abuse and sexual harassment, fully investigate reported incidents in accordance with [\*DOC Policy 3.1.19, Investigations\*](#), pursue disciplinary action, and refer for investigation and prosecution those who violate the requirements set forth in this policy.
2. The Department director, or designee, will appoint a Department PREA coordinator responsible for the following:
  - a. coordinating and developing procedures to identify, monitor, and track staff sexual abuse and sexual harassment;
  - b. conducting audits to ensure compliance with Department policy, applicable state or federal laws, and PREA standards; and
  - c. compiling records and reporting statistical data to the Federal Bureau of Justice on an annual basis as required by PREA standards.
3. Each administrator, or designee, will assign a PREA specialist responsible for the following:
  - a. coordinating facility or program PREA-related activities with the PREA coordinator;
  - b. ensuring facility or program compliance with training requirements; and
  - c. tracking and reporting related statistics to the Department PREA coordinator.

##### **B. Offender Reporting**

1. Offenders who are victims of or have knowledge of sexual abuse or sexual harassment should immediately report the incident by one of the following methods:
  - a. report the incident to a staff member, verbally or in writing;
  - b. utilize the “locked box” formal grievance procedure in accordance with [\*DOC Policy 3.3.3, Offender Grievance Program\*](#); or
  - c. use a Department-approved free confidential telephone hotline.
2. Deliberately malicious or false reports by offenders or other parties will result in disciplinary action and/or criminal charges.

##### **C. Prevention and Intervention**

1. Staff must be alert to situations in which sexual abuse or sexual harassment might occur and be capable of identifying the following indicators:
  - a. overly friendly behavior of staff and/or offenders;
  - b. the exchange of money, canteen, favors, etc.; and

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- c. security threat group activity as defined in [DOC Policy 3.1.24, Security Threat Group Identification and Management](#).
- 2. Administrators will consider PREA standards when determining adequate levels of staffing to protect offenders from sexual abuse and sexual harassment.
- 3. All facilities will identify, assess, and manage offenders with special needs, including those who are potentially vulnerable or dangerous, to provide safe housing, adequate protection, and programmatic resources to meet their needs in accordance with [DOC Policy 4.2.2, Special Needs Offenders](#).
- 4. Risk assessment of all offenders for victimization or abusiveness will take place within 72 hours of intake into a facility or program. Reassessment will occur within 30 days of intake into a facility or program and when warranted thereafter.
- 5. The Department will not tolerate retaliation against offenders, employees, or other parties for reporting sexual misconduct. Individuals that retaliate are subject to disciplinary action. Facilities and programs will employ protective measures, such as transfers or removals, to separate victims from abusers. The facility or program will monitor, for at least 90 days, the conduct and treatment of offenders and staff who reported sexual abuse or sexual harassment and offenders who were reported to have suffered sexual abuse or sexual harassment to prevent retaliation.

#### **D. Victim Services Provided**

- 1. The administrator, or designee, will develop procedures for providing victim services to offenders alleged to be victims of sexual abuse or sexual harassment, services must include, at minimum:
  - a. medical examination, documentation, and treatment of injuries; and
  - b. mental health crisis intervention and treatment.
- 2. Department employees will adhere to the following standards for examination of victims of sexual abuse or sexual harassment:
  - a. if the victim refuses medical or mental health attention, staff will document the refusal on the [Medical Treatment Refusal](#) form;
  - b. if reported within 72 hours of the incident, staff will, with the victim's permission, immediately transport the victim to a medical facility equipped to evaluate and treat sexual assault/rape victims; and
  - c. if reported more than 72 hours after the incident, staff will, with the victim's permission, adhere to the following:
    - i. refer victims to appropriate health care providers responsible for treatment and follow up care for sexually transmitted or other communicable diseases who will complete a patient history, conduct an examination to document the extent of physical injury and determine whether referral to another medical facility is required; and
    - ii. upon request from law enforcement, transport the victim to a community medical facility for evidence collection.

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3. Mental health staff or established providers will provide services for offenders victimized by sexual abuse or sexual harassment and for offenders affected other than the victimized offender.

#### **E. Staff Reporting**

1. Department employees and service providers will report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility or program. If the alleged victim is under the age of 18 the administrator, or designee, must report the allegation to the Department of Public Health and Human Services in accordance with [41-3-201, MCA](#).
2. Staff who receive a report of sexual abuse or sexual harassment will:
  - a. separate the victim from the alleged perpetrator to protect the victim and prevent violence,
  - b. promptly intervene on the victim's behalf to ensure prompt medical and psychological assistance including an assessment for potential risk of suicide; and
  - c. protect evidence in accordance with [DOC 3.1.28 Crime Scene and Physical Evidence Preservation](#).
3. Allegations that an offender was sexually abused while at another facility or program must be reported to the facility or program where the abuse occurred within 72 hours of the initial report.
4. Department employees and service providers will report sexual assault, misconduct or harassment by an employee or offender in accordance with [DOC Policy 1.1.6, Priority Incident Reporting and Acting Director System](#).
5. Any employee or service provider who fails to report an allegation, or coerces or threatens another person to submit inaccurate, incomplete, or untruthful information may face disciplinary action, up to and including dismissal.

#### **F. Investigative Protocols**

1. Reported incidents of sexual abuse and sexual harassment will be investigated in accordance with [DOC Policy 3.1.19, Investigations](#).
2. Administrators, or designees, will ensure designated staff follow appropriate security procedures outlined in [DOC Policy 3.1.28, Crime Scene and Physical Evidence Preservation](#).
3. Administrators, or designees, will establish procedures for the administrative investigation of alleged sexual abuse and sexual harassment; individuals assigned to investigate administratively will work in cooperation with the Office of Human Resources.
4. The program or facility will not rely on offender interpreters for investigations regarding sexual misconduct except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety, the performance of first-response duties or the investigation of the offender's allegations.
5. Following an investigation into an offender's allegation of sexual abuse or sexual harassment in a facility or program, the facility or program will inform the offender as to

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whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

## **G. Staff Training**

1. Prior to working with offenders, all Department employees with direct and/or incidental contact with offenders must receive documented PREA training and sign the [Staff PREA Acknowledgement](#) form. Training and documentation will be repeated biennially thereafter. Training will include, but is not limited to:
  - a. review of this policy, the [Prison Rape Elimination Act \(PREA\)](#), [DOC Policy 1.3.12, Staff Association and Conduct with Offenders](#), appropriate site-specific procedures, and any other applicable state or federal laws,
  - b. prevention, investigation, and prosecution of sexual misconduct,
  - c. the Department's zero tolerance stance,
  - d. recognition of sexual misconduct, predatory offenders, potential victims, and/or staff involvement,
  - e. facility or program procedures on sharing confidential information,
  - f. reporting procedures,
  - g. an offender's right to be free from sexual misconduct,
  - h. offender and employee rights to be free from retaliation for reporting sexual abuse,
  - i. the dynamics of sexual abuse in confinement,
  - j. common reactions of sexual abuse victims; and
  - k. gender specific training.
2. All service providers who have contact with offenders will be trained on the Department's zero tolerance policy concerning sexual abuse and harassment, prevention, detection and response methods, and how to report such incidents. The level and type of training provided to service providers will be based on the services they provide and the level of contact they have with offenders. Service providers will sign the [Service Provider PREA Acknowledgement Form](#).

## **H. Offender Education**

1. Within 72 hours of facility or program intake, staff will communicate to offenders, verbally and in writing, information about the Department's zero tolerance of sexual abuse and sexual harassment and provide information including this policy, [1.3.12, Staff Association and Conduct with Offenders](#), and [3.3.3, Offender Grievance Program](#).
2. Within 30 days of intake, the program or facility will provide education to offenders either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding program or facility procedures for reporting and responding to such incidents.
3. The program or facility will provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to offenders who have limited reading skills.
4. The program or facility will maintain documentation of offender participation in PREA education sessions and have offenders sign the [Offender PREA Acknowledgement](#) form.

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5. The program or facility will ensure that PREA information is continuously and readily available or visible to offenders through posters, offender handbooks, or other written formats.

**I. Incident Reviews**

1. The facility or program will conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Such review will normally occur within thirty (30) days of the conclusion of the investigation.
2. The review team will include upper-management from the facility or program, the Department PREA coordinator, line supervisors, investigators, medical and mental health staff, and other staff with direct involvement.
3. The review team will:
  - a. consider whether the allegation or investigation indicates a need to change policy or procedure to better prevent, detect or respond to sexual abuse,
  - b. consider whether the incident or allegation was motivated by race, ethnicity, gender identity, STG affiliation or was motivated or caused by other group dynamics at the facility or program,
  - c. examine the area where the incident allegedly occurred to assess whether the physical barriers in the area may enable abuse,
  - d. assess the adequacy of staffing levels in that area during different shifts,
  - e. assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - f. prepare a report of its findings and any recommendations for improvement and submit the report to the facility or program administrator and the Department PREA coordinator.
4. The facility or program will implement the recommendations for improvement or document its reasons for not doing so.

**J. Data Collection, Review, Storage, Publication and Destruction.**

1. There will be a system in place to collect data on incidents of sexual abuse or sexual harassment. Such data will be analyzed to determine possible corrective action or improvement.
2. The Department will collect accurate, uniform data for every allegation of sexual abuse at facilities and programs under its direct control.
3. The Department's Office of Investigations will maintain records of all allegations and investigations of sexual misconduct at secure facilities to include information on the outcome of any criminal or disciplinary charges.
4. Each facility or program PREA specialist will maintain records of all allegations, investigations, and Incident Reviews and report such information to the PREA coordinator.

**K. Sanctions**

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1. Employees who violate this policy are subject to administrative discipline including termination of employment, criminal sanctions, or both.
2. Offenders who violate this policy are subject to disciplinary action, criminal prosecution or both.

## V. CLOSING

Questions concerning this policy should be directed to the Department's PREA coordinator.

## VI. REFERENCES

- A. [41-3-201, MCA](#); [45-5-501, MCA](#); [45-5-502, MCA](#); [45-5-503, MCA](#)
- B. *4-4281-1 through 4-4281-8; 2008 ACA Standards Supplement*
- C. [Prison Rape Elimination Act of 2003](#)
- D. *DOC Policies [1.1.6, Priority Incident Reporting and Acting Director System](#); [1.5.5, Case Records Management](#); [1.3.12, Staff Association and Conduct with Offenders](#); [1.8.1, Victim Services](#); [3.1.19, Investigations](#); [3.3.3, Offender Grievance Program](#); [4.1.2, Offender Reception and Orientation](#); [4.2.1, Offender Classification System](#); [4.2.2, Special Needs Offenders](#)*

## VII. ATTACHMENTS

[Medical Treatment Refusal](#)  
[Offender PREA Acknowledgment](#)  
[Service Provider PREA Acknowledgement Form](#)  
[Staff PREA Acknowledgement](#)